

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
JTRE MANHATTAN AVENUE LLC and )  
JTRE 807 MANHATTAN AVENUE LLC, )

*Plaintiffs,* )

v. )

CAPITAL ONE, N.A., )

*Defendant.* )  
\_\_\_\_\_

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/17/22

Case No. 1:21CV5714 (VEC)

**PROPOSED AGREED ORDER**

Plaintiffs JTRE Manhattan Avenue LLC (“JTRE Manhattan”) and JTRE 807 Manhattan Avenue LLC (“JTRE 807”) (collectively, “Plaintiffs”) and Defendant Capital One, N.A. (“Capital One”), in advance of the telephonic hearing scheduled for 12:00 p.m. on June 17, 2022, propose the following agreed order for approval and entry by the Court.

1. The Court DENIES AS MOOT Plaintiffs’ motion to quash (ECF No. 84). By no later than July 6, 2022, Plaintiffs shall produce a properly redacted version of the e-mail and its attachments as identified on the privilege log at ECF No. 84-4. Plaintiffs’ mere production of the single, redacted e-mail and its attachments to Capital One does not waive any attorney-client privilege.

2. The Court DENIES AS MOOT Plaintiffs’ letter requesting adjournment (ECF No. 86). All fact discovery, other than depositions, shall be concluded no later than July 6, 2022. The parties shall be barred on summary judgment and at trial from raising or asserting any claims, issues, or defenses for which they have not produced fact discovery in response to the opposing party’s discovery requests, absent good cause shown and through no delay by the parties.

3. The Court ORDERS that Plaintiffs shall produce all responsive, non-privileged documents and communications requested by Capital One in Request for Production No. 23 by no later than July 6, 2022.


4. The Court ORDERS that no depositions shall take place until after the aforementioned close of all fact discovery on July 6, 2022. The Court further ORDERS that all fact witness depositions shall be completed no later than August 5, 2022.

5. The Court ORDERS that expert disclosures shall be made as follows: (i) the party with the burden of proof on an issue shall disclose its expert reports no later than July 29, 2022; (ii) any opposing expert reports shall be disclosed no later than August 19, 2022; and (iii) any rebuttal expert reports shall be disclosed no later than August 26, 2022. The Court further ORDERS that all expert witness depositions shall be completed no later than September 9, 2022.

6. The Court CANCELS the pretrial conference currently scheduled for July 15, 2022, and RESCHEDULES it for ~~September~~ **August 12, 2022 at 10:00 a.m.** Pre-conference submissions are due not later than **August 4, 2022**.

It is so ORDERED.

June 17, 2022  
Dated \_\_\_\_\_

  
The Hon. Valerie E. Caproni  
U.S. District Judge

WE AGREE TO THIS:

s/ John D. Wilburn

John D. Wilburn (*Pro Hac Vice*)  
Brooks H. Spears (*Pro Hac Vice*)  
McGUIREWOODS LLP  
1750 Tysons Boulevard, Suite 1800  
Tysons, VA 22102  
Phone: (703) 712-5000  
Fax: (703) 712-5282  
jwilburn@mcguirewoods.com  
bspears@mcguirewoods.com

Bryan A. Fratkin (*Pro Hac Vice*)  
McGUIREWOODS LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219  
Phone: (804) 775-1000  
Fax: (804) 775-1061  
bfratkin@mcguirewoods.com

James A. Kellar  
McCARTER & ENGLISH, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, NJ 07102  
Phone: (973) 622-4444  
Fax: (973) 624-7070  
jkellar@mccarter.com

*Counsel for Defendant*

-AND-

s/

Michael A. Pensabene  
ROSENBERG & ESTIS, P.C.  
733 3rd Avenue  
New York, NY 10017  
Phone: (212) 551-8406  
Fax: (212) 551-8484  
mpensabene@rosenbergestis.com

*Counsel for Plaintiffs*